DETAILED ACTION

Election/Restrictions

Newly submitted claims 31-34 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The curler as claimed in claims 14-30 can be made from a different method such as the described method in the prior art of record.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 31-34 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 14-30 are rejected under 35 U.S.C. 102(b) as being anticipated by JP '259.

JP '259 discloses a hair curling apparatus including (4) having a curler m40) adapted to provide electric power; and a cylindrical curler body (1) having a plurality of radially extending protrusions (10), a recess adapted to receive the curler mount, and

an internal heater (3) adapted to heat the curler and a thermolabel. The curler is made of a mixture of powders and polyester resin (paragraph 009). The powder mixture includes silicon dioxide (silica), aluminum oxide (alumina), ferrous oxide (ferrite), magnesium oxide (magnesia) and phosphoric anhydride and comprises 1-3 percent of the mixture (table 1 and paragraph 009). The mixture is capable to cause the curler body to emit electromagnetic waves of 4 to 14 microns when the curler is heated by the internal heater.

Claims 14, 15, 18-21, 24-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Wong et al.

Wong et al disclose a hair curling device comprising a base (610) having a curler mount adapted to provide electric power; and a cylindrical curler body (650) having a plurality of radially extending protrusions (660), a recess adapted to receive the curler mount, and an internal heater (see figs. 6A-B, col. 5, lines 22-41) adapted to heat the curler. The curler is made of a mixture of powders and heat-resistant resin. The powder mixture includes silicon dioxide (silica), aluminum oxide (alumina), ferrous oxide (ferrite), titanium oxide (titania), calcium oxide, magnesium oxide (magnesia) and phosphoric anhydride and comprises 3-5% of the mixture. The mixture is capable to cause the curler body to emit electromagnetic waves of 4 to 14 microns when the curler is heated by the internal heater.

Response to Arguments

Applicant has argued that prior art fails to show the curler having a mixture of heat-resistant resin, a silicon dioxide-based multi element mineral powder and far-infrared emitting powder. This is not correct, Applicant is noted that JP '259 discloses the curler including heat resistant resin being polyester elastomer (paragraph 009), powder mixture includes silicon dioxide (silica), aluminum oxide (alumina), ferrous oxide (ferrite), magnesium oxide (magnesia) and phosphoric anhydride (table 1 and paragraph 009). Applicant further argued that the present invention emphasizes the synergistic effect. It is noted that no evidence of any synergism; also, Applicant argued that prior art fails to show the mixture causes electromagnetic waves of 4 to 14 microns; however, the claim recites "the mixture being adapted to cause"; and since JP '259 shows the essential mixture powder, therefore, the mixture is capable to cause the curler body to emit electromagnetic waves of 4 to 14 microns.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robyn Doan/
Primary Examiner, Art Unit 3732